Abul Hasan bin Mohamed Rashid v Public Prosecutor

HIGH COURT (KUALA LUMPUR) — CASE NO 42–143–09 OF 2011
ASLAM ZAINUDDIN JC
5 NOVEMBER 2020

Criminal Procedure — Jurisdiction of court — Sessions court — Territorial jurisdiction of sessions court — Whether matter should be tried in Johor Bahru — Local limits of jurisdiction for sessions court — Whether Kuala Lumpur Sessions Court had same territorial jurisdiction as High Court of Malaya — Whether it was open for court to decide on preliminary objection as issue was ventilated before court predecessor

This was the appellant's appeal against his sentence and conviction for an alternative charge under s 409 of the Penal Code. The appellant (who was the second accused together with one Gordon Toh Chuan Toh, the first accused) were found guilty by the Kuala Lumpur Sessions Court under s 409 of the Penal Code. The facts were the first accused had purchased over 11.1 million shares of Multi-Code Electronic Industries (M) Bhd ('Multicode'), a company incorporated in Johor Bahru using a company, Ace Prelude Sdn Bhd ('APSB'). The first accused then got appointed as the CEO of Multicode and the appellant as the directors of Multicode. Both the accused were also made as the authorised signatories of the banking documents of Multicode. Both accused then uplifted Multicode's fixed deposits without any mandate or approval of the board of directors and transferred to third parties accounts. Among the Multicode's fixed deposits, RM18,146,168.74 was first transferred to Elliot Gordon Singapore Pte Ltd ('EGS'). After the transferred to EGS account, RM17,552,275.20 was then transferred to Kenanga Investment Bank Bhd to setltle the payment for the purchase of 11.1 million shares. The appellant was charged with a principal charge for abetting the fraud the first accused under s 87A(b) read together with 122(c) of the Securities Industry Act 1983 for having committed the offence in Johor Bahru in relation to the uplifting of the fixed deposit of multicode and with an alternative charge of criminal breach of trust committed in Johor Bahru under s 409 of the Penal Code. The issues to be determined by the court were: (a) whether the trial should have taken place in Johor Bahru; (b) whether the order made vide LN 421 of 1955 is still valid and in force; (c) whether Kuala Lumpur is no longer part of Selangor by virtue of the Constitution (Amendment) (No 1) Act 1973 (Act A 2016) therefore the Kuala Lumpur Sessions Court should have the same territorial jurisdiction as the High Court in Malaya; and (d) whether it was open for the court to decide on the preliminary objection as the issue was ventilated before the court predecessor.

Held, nullifying proceeding in the sessions court and quashing conviction and sentence:

(1) Looking at ss 419 and 422 of the CPC, whether the fact that the charges were filed in the Kuala Lumpur Sessions Court instead of the Johor Bahru Sessions Court amounted to merely an irregularity which could be cured or was an illegality which rendered the trial a nullity, the court quoted *Sohoni* (the equivalent sections in the Indian Criminal Procedure Code) which stated that the section applies only to errors in procedure and not to substantial errors of law affecting the jurisdiction of the court and a defect in jurisdiction could never be covered under this section (see para 8).

(2) Order made vide LN 421 of 1955 the Court Ordinance 1948 had clearly stated the local limits of jurisdiction for the sessions court in Peninsular Malaysia was state-wise. This order came into force on 1 October 1955 and subsisting. The Courts Ordinance 1948 was revised in 1971 and the subsidiary legislation made thereunder was still valid, in force and subsisting (see para 9).

(3) The argument that Kuala Lumpur was no longer part of Selangor by virtues of the constitution (Amendment) (No 2) Act 1973, therefore the Kuala Lumpur Sessions Court should have the same territorial jurisdiction as the High Court in Malaya was flawed because the 1955 Order had spelt out the territorial jurisdiction of the sessions courts in Selangor which included Kuala Lumpur at the time. Act A 206 was a declaratory Act and did not confer jurisdiction on the Kuala Lumpur Sessions Court. The status quo remained until amendments are made to the law and the current and previous practice of the prosecution showed that the local jurisdiction of the subordinate courts was recognised (see para 14).

(4) Based on the two cases *Lim Hung Wang & Ors v Public Prosecutor* [2011] 9 MLJ 752 and *Public Prosecutor v Ng Lai Huat & Ors* [1990] 2 MLJ 427, the court could revisit the issue. More so when the 1955 Order was not brought to the attention of the court predecessor. The court could not ignore the existence of the 1955 Order, which was still in force, in coming to the court decision (see para 19).

[Bahasa Malaysia summary

Ini merupakan rayuan perayu terhadap sabitan dan hukumannya untuk satu pertuduhan alternatif dibawah s 409 Kanun Keseksaan. Perayu (yang merupakan tertuduh kedua bersama-sama dengan Gordon Toh Chuan Toh, tertuduh pertama) didapati bersalah oleh Mahkamah Sesyen Kuala Lumpur dibawah s 409 Kanun Keseksaan. Fakta adalah bahawa tertuduh pertama telah memperoleh lebih daripada 11.1 juta saham Multi-Code Electronic Industries (M) Sdn Bhd ('Multicode'), satu syarikat yang ditubuhkan di Johor Bahru

melalui syariakt Ace Prelude Sdn Bhd ('APSB'). Tertuduh pertama kemudiannya dilantik sebagai CEO Multicode dan perayu sebagai pengarah Multicode. Kedua-dua tertuduh juga dijadikan orang yang diberi kuasa untuk menandatangni dokumen perbankan Multicode. Kedua-dua tertuduh kemudiannya mengeluarkan deposit tetap Multicode tanpa apa-apa mandat atau kelulusan lembaga pengarah dan memindahkannya ke akaun pihak ketiga. Antara deposit tetap Multicode adalah, RM18,146,168.74 yang pada mulanya dipindahkan ke Elliot Gordon Singapore Pte Ltd ('EGS'). Selepas dipindahkan ke akaun EGS, RM17,552,275.20 telah dipindahkan ke Kenaga Investment Bank Bhd untuk melangsaikan bayaran untuk pembelian 11.1 juta saham. Perayu telah dituduh dengan satu pertuduhan prinsipal membantu frod tertuduh pertama dibawah s 87A(b) dibaca bersama dengan 122(c) Akta Perindustrian Sekuriti 1983 kerana telah melakukan kesalahan tersebut di Johor Bahru berkaitan dengan pengeluaran deposit tetap Multicode dengan satu pertuduhan alternatif untuk pecah amanah jenayah yang dilakukan di Johor Bahru dibawah s 409 Kanun Keseksaan. Isu untuk diputuskan oleh mahkamah adalah: (a) sama ada perbicaraan harus dijalankan di Johor Bahru; (b) sama ada perintah yang dibuat melalui LN 421 Tahun 1955 adalah sah dan masih berkuatkuasa; (c) sama ada Kuala Lumpur bukan lagi sebahagian daripada Selangor melalui Pindaan Perlembagaan (No 1) Akta 1973 (Akta A 2016) dan oleh itu mahkamah sesyen mempunyai bidang kuasa sempadan yang sama seperti Mahkamah Tinggi Malaya; dan (d) sama ada ianya terbuka kepada mahkamah untuk memutuskan bantahan awal kerana isu tersebut telahpun di dengar di mahkamah yang terdahulu.

Diputuskan, proceeding di mahkamah sesyen terbatal dan sabitan dan hukuman terhadap tertuduh ditolak:

(1) Melihat kepada ss 419 dan 422 Kanun Tatacara Jenayah, fakta sama ada pertuduhan difailkan di Mahkamah Sesyen Kuala Lumpur dan bukan Mahkamah Sesyen Johor Bahru terjumlah kepada satu ketakaturan yang boleh dipulihkan atau satu perkara yang haram yang akan menyebabkan perbicaraan terbatal, mahkamah merujuk kepada *Sohoni* (peruntukan yang relevan dalam Kanun Tatacara Jenayah India) yang menyatakan bahawa seksyen ini hanya terpakai kepada kekhilafan dalam prosedur dan bukan kekhilafan undang-undang yang substantif yang memberi kesan kepada bidang kuasa mahkamah dan satu kecacatan dan tidak boleh dilindungi dibawah seksyen ini (lihat perenggan 8).

(2) Perintah yang dibuat melalui LN 421 Tahun 1955 Ordinan Mahkamah 1948 dengan jelas menyatakan bahawa had sempadan bidang kuasa mahkamah sesyen di Semenanjung Malaysia adalah mengikut negeri. Perintah ini berkuat kuasa pada 1 Oktober 1955 dan masih berkuat kuasa. Ordinan Mahkamah 1948 yang disemak semula pada tahun 1971

dan undang-undang subsidiari yang dibuat dibawahnya masih sah dan berkuat kuasa (lihat perenggan 9).

(3) Hujahan bahawa Kuala Lumpur bukan lagi sebahagian daripada Selangor berdasarkan Akta Pindaan Perlembagaan (No 2) 1973, oleh itu Mahkamah Sesyen Kuala Lumpur sepatutnya mempunyai bidang kuasa sempadan yang sama dengan Mahkamah Tinggi di Malaya adalah cacat kerana perintah 1955 telah membutirkan bidang kuasa sempadan mahkamah sesyen di Selangor yang termasuklah Kuala Lumpur pada waktu tersebut. Akta A 206 adalah satu akta pengisytiharan dan tidak memberikan bidang kuasa Mahkamah Sesyen Kuala Lumpur. Status quo masih kekal sehingga pindaan dibuat kepada undang-undang dan amalan kini dan terdahulu pihak pendakwaan menunjukan bahawa bidang kuasa sempadan mahkamah rendah diiktiraf (lihat perenggan 14).

(4) Berdasarkan dua kes *Lim Hung Wang & Ors v Public Prosecutor* [2011] 9 MLJ 752 and *Public Prosecutor v Ng Lai Huat & Ors* [1990] 2 MLJ 427, mahkamah boleh melihat semula isu tersebut. Tambahan lagi apabila perintah Tahun 1955 tidak dibawa ke perhatian mahkamah terdahulu. Mahkamah tidak boleh tidak mengendahkan perintah 1955, yang masih berkuat kuasa, apabila mahkamah tiba ke keputusannya (lihat perenggan 19).]

Cases referred to

Hen Chean Seng & Anor v PP [1983] 1 MLJ 297, FC (refd)
Lim Hung Wang & Ors v PP [2011] 9 MLJ 752; [2011] 7 CLJ 318, HC (refd)
Manshor bin Omar v PP and another application [2005] 2 MLJ 344, HC (distd)
PP v Ng Lai Huat & Ors [1990] 2 MLJ 427, HC (refd)
PP v Segaran a/l S Mathavan [2009] 9 MLJ 597, HC (distd)
Taman Rimba (Mentakab) Sdn Bhd v Sin Yew Poh Tractor Works [2002] 5 MLJ 321; [2002] 2 CLJ 112, HC (refd)
Tengku Abdul Aziz v PP [1951] 1 MLJ 185; [1951] 1 LNS 126 (refd)
Tengku Abdul Muiz Shah & Ors v PP [1983] 1 MLJ 422 (refd)
Wong Pang Fing v PP [1997] 2 MLJ 151, HC (refd)

Legislation referred to

Courts Ordinance 1948
Criminal Procedure Code ss 180(3), 376, 419, 422
Federal Constitution art 145
Criminal Procedure Code [IND] ss 177, 462, 465
Penal Code s 409
Securities Industry Act 1983 (repealed By Capital Markets And Services Act 2007)

Subordinate Courts Act 1948

Muhammad Shafee bin Md Abdullah (Wan Aizuddin bin Wan Mohammed and Nur Syahirah bt Hj Hanapiah with him) (Shafie & Co) for the appellant.
Mohd Hafiz bin Mohd Yusoff (Hasley Tajuddin and Raihanah Nadhirah bt Rafidi with him) (Deputy Public Prosecutor, Attorney General's Chamber) for the respondent.

Aslam Zainuddin JC:

[1] In this case the appellant (who was the second accused together with one Gordon Toh Chun Toh) was found guilty by the Sessions Court in Kuala Lumpur on the alternative charge under s 409 of the Penal Code and sentenced to six years imprisonment. A stay of execution of the sentence was granted pending the outcome of the appeal in the High Court. Prior to this matter coming up for hearing before me, the first accused Gordon Toh had passed away on 27 August 2012. After hearing submissions from both parties in this case, I quashed the conviction and sentence meted out on the appellant by the court below on the grounds that the sessions court did not have the territorial jurisdiction to hear this matter as the offence was committed in Johor Bahru. Therefore, this matter should have been filed in the Johor Bahru Sessions Court in the first instance. To understand the background of this case it is helpful to recapitulate the facts of the case as found by the learned sessions court judge. This is what he said:

> [1] A premeditated white collar scandal executed with precision within the T + 3 days is how I would sum up this case. The modus operandi was very simple. The accused, Toh Chun Toh Gordan (first accused), a Singaporean, having dual degrees in Engineering and Economics from Southern California Pacific University, having a Masters in Business Administration, a former Midland Bank Group Regional Executive Director of South East Asia, former Regional Manager of Amco Merchant Bank, former Senior Regional Manager of Lloyds Bank International, bought over 11.1 million shares in Multi-code Electronics Industries (M) Bhd ('Multicode') using Ace Prelude Sdn Bhd ('APSB') as the vehicle. He then got himself appointed as the Executive and Non Independent Director and the Chief Executive Officer ('CEO') of Multicode and got the other accused, Dato' Abul Hasan bin Mohamad Rashid ('second accused') together with two others as the directors of Multicode. Both the first and second accused were also appointed as the authorised signatories of the banking documents of Multicode. They then swiftly uplifted Multicode's fixed deposits ('FDs') in the tune of RM26 over million the very next working day without any mandate or approval of the Board of Directors of Multicode ('BOD') and used Multicode's monies to pay for Multicode's shares that the first accused purchased via APSB within the T + 3 days.

[2] The second accused was charged as follows:

Amended Principal Charge

That you, between 26 March 2007 and 28 March 2007, at Kenanga Investment Bank Berhad (Company No 15678-H) (formerly known as K & N Kenanga Berhad), Level 2, Menara Pelangi, Jalan Kuning, Taman Pelangi, 80400 Johor Bahru, in the state of Johor Darul Takzim, indirectly in connection with the purchase of securities namely 11.1 million units of Multi-code Electronics Industries (M) Berhad shares (hereinafter referred to as 'the shares'), abetted Toh Chun Toh Gordon (Singapore Passport No E0652347N) to engage in an act which operated as a fraud on Multi-code Electronics Industries (M) Berhad (Company No 193094-K) by causing the uplifting of Fixed Deposits belonging to Multi-code Electronics Industries (M) Berhad (as per Appendix 1) amounting to RM18,146,168.74 out of which RM17,552,275.20 was subsequently paid to Kenanga Investment Bank Berhad (Company No 15678-H), banking account no 0001–312100888613 at Standard Chartered Bank Berhad, No 2, Jalan Ampang, Kuala Lumpur, for the purchase of the shares by Ace Prelude Sdn Bhd (Company No 734044-X) through trading account no 3AC0027 with Kenanga Investment Bank Berhad (formerly known as K & N Kenanga Berhad), which offence was committed as a result of your abetment and you have thereby committed an offence under Section 87A(b) read together with Section 122C(c) of the Securities Industry Act 1983 (Act 280) and punishable under section 122C of the same Act.

Alternative Charge

That you, between 23 March 2007 and 28 March 2007, at Multi-code Electronics Industries Sdn Bhd (Company No 193094-K) Suite 11.2B, Level 11, Menara Pelangi, No. 2, Jalan Kuning, Taman Pelangi, 80400, Johor Bahru, in the state of Johor Darul Takzim, as an agent, namely a Director of Multi-code Electronics Industries (M) Berhad (Company No 193094-K) and in such capacity entrusted with certain property (as per Appendix 2), amounting to RM26,045,473.94, had committed criminal breach of trust in respect of the said property, and you have thereby committed criminal breach of trust of the said property, an offence under section 409 of the Penal Code and punishable under the same section.

Appendix 1

No	Bank	Fixed deposits	Total Upliftment
1.	RHB Bank Bhd	Account No 3–01147–009413–9	RM504,958.91
2.	RHB Bank Bhd	Account No 3–01147–009412–0	RM504,958.91
3.	RHB Bank Bhd	Account No 3–01147–006780–8	RM500,000
4.	RHB Bank Bhd	Account No 3–01147–006776–0	RM500,000
5.	RHB Bank Bhd	Account No 3–01147–006778–6	RM500,000
6.	RHB Bank Bhd	Account No 3–01147–006779–4	RM500,000

7.	RHB Bank Bhd	Account No 3–01147–007518–5	RM500,000
8.	RHB Bank Bhd	Account No 3–01147–007651–3	RM500,000
9.	RHB Bank Bhd	Account No 3–01147–007519–3	RM500,000
10.	RHB Bank Bhd	Account No 3–01147–007650–5	RM500,000
11.	Public Bank Bhd	S/NI 636397	RM506,657.53
12.	Public Bank Bhd	S/NI 636394	RM506,657.53
13.	Public Bank Bhd	S/NI 636396	RM506,657.53
14.	Public Bank Bhd	S/NI 636356	RM500,000
15.	Public Bank Bhd	S/NI 366255	RM504,463
16.	Public Bank Bhd	S/NI 636355	RM500,000
17.	Public Bank Bhd	S/NI 366254	RM504,463
18.	Public Bank Bhd	S/NI 636395	RM506,657.53
19.	Bank Kerjasama Rakyat (M) Bhd	No Sijil 10305651	RM505,684.38
20.	Bank Kerjasama Rakyat (M) Bhd	No Sijil 10305652	RM505,684.38
21.	Bank Kerjasama Rakyat (M) Bhd	No Sijil 10305649	RM505,684.38
22.	Bank Kerjasama Rakyat (M) Bhd	No Sijil 10305650	RM505,684.38
23.	Bank Kerjasama Rakyat (M) Bhd	No Sijil 10305520	RM512,992.88
24.	Bank Kerjasama Rakyat (M) Bhd	No Sijil 10305521	RM512,992.88
25.	Bank Kerjasama Rakyat (M) Bhd	No. Sijil 10305518	RM512,992.88
26.	Bank Kerjasama Rakyat (M) Bhd	No Sijil 10305519	RM512,992.88
27.	Bank Kerjasama Rakyat (M) Bhd	No Sijil 10305516	RM512,992.88
28.	Bank Kerjasama Rakyat (M) Bhd	No Sijil 10305517	RM512,992.88
29.	Bank Kerjasama Rakyat (M) Bhd	No Sijil 10218401	RM500,000
30.	Bank Kerjasama Rakyat (M) Bhd	No Sijil 10218402	RM500,000

Appendix 2

No	Bank	Fixed deposits	Total Upliftment
1.	RHB Bank Bhd	Account No 3–01147–009413–9	RM504,958.91
2.	RHB Bank Bhd	Account No 3–01147–009412–0	RM504,958.91
3.	RHB Bank Bhd	Account No 3–01147–006780–8	RM500,000.00
4.	RHB Bank Bhd	Account No 3–01147–006776–0	RM500,000.00
5.	RHB Bank Bhd	Account No 3–01147–006778–6	RM500,000.00
6.	RHB Bank Bhd	Account No 3–01147–006779–4	RM500,000.00
7.	RHB Bank Bhd	Account No 3–01147–007518–5	RM500,000.00
8.	RHB Bank Bhd	Account No 3–01147–007651–3	RM500,000.00
9.	RHB Bank Bhd	Account No 3–01147–007519–3	RM500,000.00
10.	RHB Bank Bhd	Account No 3–01147–007650–5	RM500,000.0
11.	Public Bank Bhd	S/NI 636397	RM506,657.53
12.	Public Bank Bhd	S/NI 636394	RM506,657.53
13.	Public Bank Bhd	S/NI 636396	RM506,657.53
14.	Public Bank Bhd	S/NI 636356	RM500,000.00
15.	Public Bank Bhd	S/NI 366255	RM504,463.00
16.	Public Bank Bhd	S/NI 636355	RM500,000.00
17.	Public Bank Bhd	S/NI 366254	RM504,463.00
18.	Public Bank Bhd	S/NI 636395	RM506,657.53
19.	Malayan Banking Bhd	Account No 501299506866	RM9,000,000.00
20.	Malayan Banking Bhd	Account No 501299506866	RM2,000,000.00
21.	Malayan Banking Bhd	Account No 501299506866	RM6,000,000.00
		TOTAL	RM26,045,473.94

(a) Multicode is a public listed company since 1997. Goh Tong Huat, ('PW1') together with his two brothers, Goh Chai Siong and Goh See Chuan were the main promoters and the brains of the company. Since listing, PW1 has been the Managing Director of Multicode. PW1 together with his wife owned 28.4% shareholdings in Multicode;

(b) towards the end of February or early March a lunch meeting took place at the Zone Hotel in Johor Bahru where PW1, Dr Goh Kar Choon ('PW6'), Nora Lam ('PW2'), Woo Chee Leong, the first accused and one Daniel Wong were present. During the meeting PW1 was informed by the first accused that he was a fund manager and had parked his money in Malaysia and is interested to buy PW1's shares in Multicode. PW1 was also informed that the first accused will use APSB as the vehicle to buy the shares and that the first accused is a representative of APSB;

(c) on 23 March 2007, PW1 sold his and his family members' shareholdings in Multicode amounting to 11.1 million shares to the first accused through APSB;

(d) immediately after the share transaction was transacted on 23 March 2007, Multicode's BOD's meeting was convened wherein PW1 resigned as a director of Multicode and the first accused was appointed as a director and the CEO of Multicode. In the same meeting the second accused was appointed as the director of Multicode. Both the accused were also made the authorised signatories of Multicode's accounts which included the fixed deposits ('FDs');

(e) what is most pertinent to note of 23 March 2007 BOD's meeting is that no approval was sought or obtained to uplift the FDs nor was there any discussion held pertaining to the upliftment of the FDs;

(f) on 26 March 2007, PW1 handed over Multicode's FDs certificates to the first accused in the presence of the second accused, PW6 and Ang Ai Ling ('PW4');

(g) on the same day immediately after the handover, both the accused together with Winnie Tee Keng See ('PW5') went to Public Bank, RHB Bank, Maybank and Affin Bank and the Multicode FDs were uplifted and transferred to third parties accounts;

(h) the FDs in Public Bank, RHB Bank and Bank Rakyat were uplifted and transferred to Elliot Gordon Singapore Pte Ltd ('EGS') account which was maintained at Ambank, Kuala Lumpur. The total sum that was transferred to EGS was RM18,146,168.74;

(i) the first accused was the sole authorised signatory of the EGS account;

(j) after the transfer of RM18,146,168.74 to EGS account, upon the instruction and authorisation of the first accused a sum of RM17,552,275.20 was transferred to Kenanga Investment Bank Bhd's (formerly known as K & N Kenanga Bhd) ('Kenanga') account at Standard Chartered, Kuala Lumpur on 27 March 2007. This transfer of RM17,552,275.20 was made to Kenanga for the purpose of settling the payment for the purchase of 11.1 million shares sold by PW1 and his family members to the first accused via APSB;

(k) the sale and purchase of the shares was done via Direct Business Transaction ('DBT') whereby the day the transaction was transacted was on 23 March 2007 (Friday), also known as the 'T' day. The payment for the share transaction was required to be made to PW1 on a T + 3 days that is the transaction day plus three working days. Since the transaction date was 23 March 2007 (Friday) payment must be settled by the 28 March 2007 (Wednesday);

(l) the sum of RM17,552,275.20 that was transferred from EGS to Kenanga was then used to pay PW1 and his family for the settlement of the shares transaction. Kenanga had, on 28 March 2007 issued payment to PW1 and his family members for the sale of the 11.1 million shares; and

(m) it must be noted that in the subsequent BOD's meetings including the BOD's meeting held on 29 March 2007 both the accused did not inform the BOD that they had uplifted the FDs from Multicode's account and had transferred the monies to third parties' account.

DECISION OF THIS COURT

First issue – Whether the trial should have taken place in Johor Bahru id est whether the Johor Bahru Sessions Court has the territorial jurisdiction to hear the case and not the Kuala Lumpur Sessions Court

[3] This case was filed in the Kuala Lumpur Sessions Court presumably by virtue of Arahan Amalan Hakim Besar Malaya Bil 2 2008 (Chief Judge of Malaya's Practice Direction No 2 of 2008) which came into effect on 5 September 2008 which required all cases under the Securities Industry Act 1983 ('Act 280') to be filed in the Kuala Lumpur Sessions Court. This practice direction is a sequel to Chief Judge of Malaya's Practice Direction No 3 of 2004 which was cancelled by the 2008 practice direction.

THE LAW

[4] Subordinate Courts Act 1948 (Revised 1972) Act 92:

s 59 Constitution and territorial jurisdiction of Sessions Courts

(1) The Yang di-Pertuan Agong may, by order, constitute so many Sessions Courts as he may think fit and shall have power, if he thinks fit, to assign local limits of jurisdiction thereto.

(2) Subject to this Act or any other written law, a Sessions Court shall have jurisdiction to hear and determine any civil or criminal cause or matter arising within the local limits of jurisdiction assigned to it under this section, or, if no such local limits have been assigned, arising in any part of Peninsular Malaysia.

(3) Each Sessions Court shall be presided over by a Sessions Court Judge appointed by the Yang di-Pertuan Agong on the recommendation of the Chief Judge.

(4) Sessions Courts shall ordinarily be held at such places as the Chief Judge may direct, but should necessity arise they may also be held at any other place within the limits of their jurisdiction.

[5] The Criminal Procedure Code ('the CPC') states:

2 Interpretation

(1) In this Code:

'local limits of the jurisdiction' of a Magistrate's Court means the limits of the ordinary administrative district in which the Court house is situated;

9 Criminal jurisdiction of Magistrates

Subject to the provisions of this Code every Magistrate shall have cognizance of and power and authority to:

(a) hear, try, determine and dispose of in a summary way prosecutions for offences committed wholly or in part within the local jurisdiction of such Magistrate and cognizable by such Magistrate;

[6] Even though the above provisions of the CPC talk about magistrates, they apply equally to the sessions courts. See *Tengku Abdul Aziz v Public Prosecutor* [1951] 1 MLJ 185; [1951] 1 LNS 126:

Chapter XIV

JURISDICTION OF CRIMINAL COURTS IN INQUIRIES AND TRIALS

121 Ordinary place of inquiry and trial

Every offence shall ordinarily be inquired into and tried by a Court within the *local* limits of whose jurisdiction it was committed. (Emphasis added.)

The Common Law principle is that all crimes are local and are justiciable by local courts within whose jurisdiction they were committed. This is embodied in section 121 of the CPC. Therefore, the competency of the court to take cognisance of or try an offence is determined by the place where the offence has been committed (see *The Criminal Procedure Code A Commentary* (2nd Ed) by Srimurugan Alagan)

[7] In *Sohoni's Code of Criminal Procedure, 1973* (22nd Ed) 2018 Vol 2 pp 2331–2332 it is written (the equivalent section in the Indian Criminal Procedure Code is s 177):

Crime is in its essential nature local, and the section adopts the common law of England that all crimes are local and justiciable only by the local courts within whose jurisdiction they are committed (see *Mohd Yusufuddin v Queen-Empress* 1898 ILR 25 Cal 20 (PC).

Chapter XLIII

IRREGULARITIES IN PROCEEDINGS

419 Proceeding in wrong place, etc

No finding, sentence or order of any criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceedings in the course of which it was arrived at, passed or made, took place in a wrong *local* area or before a wrong Magistrate or Court, unless it appears that such error occasioned a failure of justice.

422 Irregularities not to vitiate proceedings

Subject to the provisions contained in this Chapter no finding, sentence or order passed or made by a *Court of competent jurisdiction* shall be reversed or altered on account of:

(a) any error, omission or irregularity in the complaint, sanction, consent, summons, warrant, charge, judgment or other proceedings before or during trial, or in any inquiry or other proceedings under this Code;

(b) the want of any sanction; or

(c) the improper admission or rejection of any evidence, unless such error, omission, irregularity, want, or improper admission or rejection of evidence has occasioned a failure of justice.

[8] Looking at ss 419 and 422 of the CPC, whether the fact that the charges were filed in the Kuala Lumpur Sessions Court instead of the Johor Bahru Sessions Court amounts to merely an irregularity which can be cured or is an illegality which would render the trial a nullity, *Sohoni* states (the equivalent sections in the Indian Criminal Procedure Code are ss 462 and 465):

The section applies only to errors in procedure and not to substantial errors of law affecting the jurisdiction of the court. A defect in jurisdiction can never be covered under this section.

Which brings me to the order made vide LN 421 of 1955 which has clearly stated that the local limits of jurisdiction for the sessions court in Peninsular Malaysia is state-wise id est for the Sessions Court in Johore — the territorial boundaries of the state of Johore and so on and so forth. For ease of reference I set out below LN 421 The Courts Ordinance 1948 dated 9 September 1955

A

L.N. 421.

THE COURTS ORDINANCE, 1948

(F.M. No. 43 of 1948)

B

IN exercise of the powers conferred upon him by sections 59 and 76 of the Courts Ordinance, 1948, the High Commissioner hereby makes the following Order:

Citation.

1. This Order may be cited as the **Courts (Subordinate Courts) Order, 1955,** and shall come into force on the first day of October, 1955.

C

The constitution and limits of jurisdiction of Sessions Courts.

2. The Sessions Courts in the first column of the First Schedule hereto are hereby constituted and local limits of jurisdiction as set out in the second column of the said schedule hereto are assigned to each.

The constitution and limits of jurisdiction of Magistrates' Courts.

3. The Magistrates' Courts in the first column of the Second Schedule hereto are hereby constituted and local limits of jurisdiction as set out in the second column of the said schedule hereto are assigned to each.

D

Rescission of previous Orders.

4. All previous orders under sections 59 and 76 of the Courts Ordinance, 1948, are hereby rescinded.

FIRST SCHEDULE

(Paragraph 2)

(1) Sessions Courts	(2) Local limits of jurisdiction
The Sessions Court of the State of Johore	The territorial boundaries of the State of Johore
The Sessions Court of the State of Kedah	The territorial boundaries of the State of Kedah
The Sessions Court of the State of Kelantan	The territorial boundaries of the State of Kelantan
The Sessions Court of the Settlement of Malacca	The territorial boundaries of the Settlement of Malacca
The Sessions Court of the State of Negri Sembilan	The territorial boundaries of the State of Negri Sembilan
The Sessions Court of the State of Pahang	The territorial boundaries of the State of Pahang
The Sessions Court of the Settlement of Penang and Province Wellesley	The territorial boundaries of the Settlement of Penang
The Sessions Court of the State of Perak	The territorial boundaries of the State of Perak
The Sessions Court of the State of Perlis	The territorial boundaries of the State of Perlis
The Sessions Court of the State of Selangor	The territorial boundaries of the State of Selangor
The Sessions Court of the State of Trengganu	The territorial boundaries of the State of Trengganu

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SECOND SCHEDULE

(Paragraph 3)

(1) Magistrates' Courts	(2) Local limits of jurisdiction
The Magistrates' Court of the State of Johore	The territorial boundaries of the State of Johore
The Magistrates' Court of the State of Kedah	The territorial boundaries of the State of Kedah
The Magistrates' Court of the State of Kelantan	The territorial boundaries of the State of Kelantan
The Magistrates' Court of the Settlement of Malacca	The territorial boundaries of the Settlement of Malacca
The Magistrates' Court of the State of Negri Sembilan	The territorial boundaries of the State of Negri Sembilan
The Magistrates' Court of the State of Pahang	The territorial boundaries of the State of Pahang

H

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(1) Magistrates' Courts	(2) Local limits of jurisdiction
The Magistrates' Court of the Settlement of Penang and Province Wellesley	The territorial boundaries of the Settlement of Penang and Province Wellesley
The Magistrates' Court of the State of Perak	The territorial boundaries of the State of Perak
The Magistrates' Court of the State of Perlis	The territorial boundaries of the State of Perlis
The Magistrates' Court of the State of Selangor	The territorial boundaries of the State of Selangor
The Magistrates' Court of the State of Trengganu	The territorial boundaries of the State of Trengganu

Dated this 9th day of September, 1955.

[RSC. 30A/46.]

By Command,

D. C. WATHERSTON,
Chief Secretary

L.N. 422.

THE COURTS ORDINANCE, 1948

(F.M. No. 43 of 1948)

IN exercise of the powers conferred by section 57 of the Courts Ordinance, 1948, I hereby direct that proceedings instituted in any Subordinate Court and not terminated before the coming into force of the Courts (Subordinate Courts) Order, 1955, shall be carried on in the corresponding Subordinate Court constituted by the said Order and any such proceeding may be amended as may appear necessary or proper.

L.N. 421/55.

Dated this 9th day of September, 1955.

[RSC. 30A/46.]

CHARLES MATHEW,
Chief Justice

L.N. 423.

THE POLICE ORDINANCE, 1952

(No. 14 of 1952)

IN exercise of the powers conferred upon him by section 26 of the Police Ordinance, 1952, the High Commissioner in Council hereby makes the following Order:

Citation.

1. This Order may be cited as the **Police (Service Outside the Federation) Order, 1955.**

Purpose for which police officers may proceed for service outside the Federation.

2. Police officers may, in the interests of peace and good order of the Federation, or in compliance with the request of the Government of the Colony of Singapore, of North Borneo or of Sarawak, or of the State of Brunei, proceed for service outside the Federation for the following purposes:

(*a*) Enquiries relating to the investigation of crime committed in the Federation;

[9] This order came into force on 1 October 1955 and is still valid and subsisting. The Courts Ordinance 1948 was revised in 1972 and the subsidiary legislation made thereunder is still valid, in force and subsisting.

[10] In the case of *Taman Rimba (Mentakab) Sdn Bhd v Sin Yew Poh Tractor Works* [2002] 5 MLJ 321; [2002] 2 CLJ 112 James Foong J (as he then was) held:

> 'Local limits', according to Ms Goh, is set out in the High Court Practice Direction 4 of 1993. There, the then Chief Justice of Malaya assigned to the Ipoh Sessions Court the territorial jurisdictional areas of Ipoh, Batu Gajah, Parit, Kampar, Sitiawan, Lumut, and Pantai Remis.
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> These areas designated to the Ipoh Sessions Court are certainly not the place where the cause or matter in this action arose. It was in either Mentakab or Kuala Lumpur. Unlike the High Court of Malaya sitting in various capital cites and towns in Peninsular Malaysia, the sessions courts throughout the country do not enjoy concurrent territorial jurisdiction of each other. Though they are set up by His Majesty, the Yang di-Pertuan Agong under s 59(1) of the SCA , territorial jurisdictional boundaries are allocated to them. This is declared in s 59(2) of the SCA which says that the sessions court shall 'hear and determine any civil or criminal cause or matter arising within the local limits of jurisdiction assigned to it'. The High Court of Malaya does not have such restrictions except that it cannot go beyond the shores of the Malay Peninsular, vice versa with the High Court of Sabah and Sarawak whose territorial jurisdictional limits are confined to the two states in East Malaysia. But within each of the High Courts' territorial limits, a High Court Judge has concurrent and coordinate jurisdiction to try cases as his counter part in another city or town where there is a High Court. The rationale for this is, as explained by Justice Lim Beng Choon in *Sova Sdn Bhd v Kasih Sayang Realty Sdn Bhd* [1988] 2 MLJ 268 at p 270, the two respective High Courts have many branches. Thus, a judge sitting in the High Court of Malaya at Kuala Lumpur has the same power and right to try a matter or cause arising in another part of West Malaysia. This set up is therefore different from the subordinate courts. The subordinate courts have the restriction of local limits of jurisdiction assigned to them. When a cause or matter arises outside its local limits, then it has no jurisdiction to hear the substantive matter.

[11] In the case of *Tengku Abdul Muiz Shah & Ors v Public Prosecutor* [1983] 1 MLJ 422, Mohamed Dzaiddin J (as he then was) said:

> 'Subordinate courts' means 'any inferior court from the decisions of which by reason of any written law there is a right of appeal to the High Court and means in relation to the High Court any such court as by any written law has jurisdiction within the local jurisdiction of the High Court.
>
> The constitution and territorial jurisdiction of both the sessions and magistrates' courts are provided in the Subordinate Courts Act 1948 ('Act 92'). They have jurisdiction to hear and determine any civil or criminal cause or matter arising within the local jurisdiction assigned to them or, if no such local limits have been assigned, arising in any part of the local jurisdiction of the respective High Court.
>
> It is clear from the various sections of the two Acts considered above, the sessions and magistrates' courts can exercise their functions on any cause or matter arising within their local jurisdiction.

[12] In *Wong Pang Fing v Public Prosecutor* [1997] 2 MLJ 151, Elizabeth Chapman JC (as she then was) decided as follows: A

> The appellant was charged under s 33 of the Commercial Vehicles Licensing Board Act 1987 in the Magistrates' Court at Kuching. To this charge, he pleaded guilty and was convicted on his own plea and a fine of RM500 in default one month's imprisonment was imposed. It was further ordered that his motor van be forfeited. On appeal, learned counsel for the appellant raised an interesting point, that the trial magistrate had no jurisdiction to hear the case as the offence was committed outside its jurisdiction. B
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> The offence here was committed at 17th Mile Kuching/Bau Road, Bau, in the State of Sarawak. The issue before this court is whether the trial magistrate at Kuching had the jurisdiction to hear the case since the offence was committed in the District of Bau which had its own courthouse. C
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> In this instant case, the offence took place at the 17th Mile Kuching/Bau Road and the 17th Mile is well within the Bau administrative area. The trial magistrate was, in this case, a resident magistrate in Kuching. The administrative district is constituted by the Administrative Areas Order GN 629/49 (as amended by Sarawak LN 54/83) made under the Administrative Areas Ordinance (Sarawak Cap 4). Under the schedule to that order, Bau District and Kuching are two separate administrative areas of the First Division and the 17th Mile Kuching/Bau Road is well within the Bau administrative area. D E
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> Section 121 of the Criminal Procedure Code further provides that every offence shall ordinarily be inquired into and tried by a court within the local limits of whose jurisdiction it was committed and s 122 provides that when a person is accused of the commission of any offence by reason of anything which has been done and of any consequences which has ensued, such offence may be inquired into or tried by a court within the local limits of whose jurisdiction any such thing has been done or any such consequence has ensued. F
>
> The trial magistrate in this case was a resident magistrate in Kuching and clearly had no jurisdiction to hear this case at the magistrates' court in Kuching as he had no jurisdiction over the District of Bau. G

[13] Therefore, I have to respectfully differ with the decision in *Public Prosecutor v Segaran a/l S Mathavan* [2009] 9 MLJ 597, as well as *Manshor bin Omar v Public Prosecutor and another application* [2005] 2 MLJ 344 and other similar cases on point. H

Submission by the Securities Commission that Kuala Lumpur is no longer part of Selangor by virtue of the Constitution (Amendment) (No 2) Act 1973 (Act A 206), therefore the Kuala Lumpur Sessions Court should have the same territorial jurisdiction as the High Court in Malaya I

[14] In my view, this argument is flawed because:

(a) the 1955 Order has already spelt out the territorial jurisdiction of the sessions courts in Selangor which included Kuala Lumpur at the time. Act A 206 is a declatory Act and does not confer jurisdiction on the Kuala Lumpur Sessions Court. The status quo remains until amendments are made to the law;

(b) in *Hen Chean Seng & Anor v Public Prosecutor* [1983] 1 MLJ 297 the Federal Court held:

> The High Court has in this case made a reference to this court under s 48(4) of the Courts of Judicature Act, 1964 on two constitutional questions:
>
> (1) Whether the Federal Territory is an integral part of Malaysia.
>
> (2) Whether the High Court in Malaya sitting in the Federal Territory is lawfully constituted.
>
> We should however add that in respect of the second question the answer is clearly provided for in the provisions of s 6(1) of Act A206 (as amended by the Constitution (Amendment)(No 2) Act, 1976-Act A335) which prescribes that *any written law existing and in force in the Federal Territory shall continue to be in force therein until repealed, amended or replaced by laws passed by Parliament*. The Courts of Judicature Act is such a written law existing and in force in the Federal Territory prior to February 1, 1974 and the local jurisdiction of the High Court in Malaya as defined in s 3 of that Act clearly applied to the Federal Territory when it was still within the State of Selangor previous to the operation of Act A206 and continues to so apply by virtue of the provisions of s 6(1) of Act A206. On the point taken in respect of art 121(1)(a) of the Constitution as to the vesting of judicial power in the High Court in Malaya for the States of Malaya, art 2(a) of the Constitution read in the light of the definition of 'state' in art 159(6), Act A206 and the provisions of art 1 of the Constitution, considered together and in that order, clearly manifest the position that the High Court in Malaya has jurisdiction in the Federal Territory, and in any event any contention to the contrary would seemingly divest the High Court in Malaya of any judicial power or jurisdiction throughout the States of Malaya as art 121(1)(a) of the Constitution specifically prescribes that the High Court in Malaya shall have its principal registry in Kuala Lumpur, the status of which is in issue in the questions referred to us.

(c) the current and previous practice of the prosecution shows that the local jurisdiction of the subordinate courts is recognised. This can be seen for example in the recent case of a Member of Parliament who was charged in the Butterworth Sessions Court first and the prosecution then applied for the case to be transferred to the Kuala Lumpur Sessions Court. If indeed the Kuala Lumpur Sessions Court has similar territorial jurisdiction as the High Court in Malaya, as submitted by the respondent, then it would not be necessary for the prosecution to file the charges in the Butterworth Sessions Court first. They could have filed the charges in the Kuala Lumpur Sessions Court directly.

Whether it is open for me to decide on this preliminary objection again as the issue was ventilated before my predecessor brother judge

[15] In the case of *Lim Hung Wang & Ors v Public Prosecutor* [2011] 9 MLJ 752; [2011] 7 CLJ 318, the applicants were the accused in a drug trafficking case before the High Court, which, at the end of the prosecution's case, found that a prima facie case had been proved against them. Their defence was called pursuant to s 180(3) of the Criminal Procedure Code ('the CPC') and dates were fixed for their evidence to be heard. However, before the defence could be heard, the applicants applied for the court to review its finding of a prima facie case.

[16] The two main issues to be decided were as follows:

(a) whether the High Court has the power to review its own finding on prima facie case at the end of the prosecution case; and

(b) should issue (a) be answered in the affirmative, whether there were errors in the decision of the court in calling the applicants to enter their defence.

[17] Mohd Zawawi Salleh J (as he then was) opined as follows:

> The burden rests upon the applicants to demonstrate the exceptional circumstances which warrant this court to review its own finding. To my mind, exceptional circumstances include:
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> (a) discovery of a new fact not known by the court at the time it made the original decision;
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> (b) emergence of new evidence which could have a decisive factor in reaching the original decision;
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> (c) a material change in circumstances since the original decision; and
>
> (d) a reason to believe that the original decision was erroneous or constituted an abuse of power that resulted in an injustice.

[18] In *Public Prosecutor v Ng Lai Huat & Ors* [1990] 2 MLJ 427, Faiza Tamby Chik JC (as he then was) said:

> I have dealt here at length with the basic principle of hearsay evidence because I am of the view that the demands made by Jimmy Chua to PW13 formed the super structure of the prosecution's case. I was wrong to admit the evidence of PW13 in relation to Jimmy Chua's purported demands in the early part of the prosecution stage. I therefore reverse my earlier ruling on this point and rule that those purported demands are inadmissible for being hearsay.

[19] Based on the above two cases of *Lim Hung Wang & Ors v Public*

A *Prosecutor* [2011] 9 MLJ 752; [2011] 7 CLJ 318 and *Public Prosecutor v Ng Lai Huat & Ors* [1990] 2 MLJ 427, I can revisit the issue. More so when the 1955 Order was not brought to the attention of my learned brother judge. I cannot ignore the existence of the 1955 Order, which is still in force, in coming to my decision.

B

Merits of the appeal.

[20] Based on what I have adumbrated above, I don't have to go into the merits of the appeal. I therefore declared that the proceedings in the sessions C court below were a nullity and quash the conviction and sentence against the appellant.

[21] On the issue of whether there should be a retrial or not, I declined to make a ruling on it as this is within the purview of the Public Prosecutor under D art 145 of the Federal Constitution and s 376 of the CPC. I'm sure the public prosecutor in his wisdom will decide based on the law and public interest as well as the fact that this case had its genesis in 2007. In the event *cadit quaestio*.

E *The proceeding in the sessions court were a nullity and conviction and sentence against the appellant were quashed.*

Reported by Izzat Fauzan

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